

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO. 3056-12
BILL NO. SS for SCS for HS for HCS for HB 1215 & 1240
SUBJECT: Crimes and Punishment; Science and Technology.
TYPE: Original
DATE: May 5, 2000

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
General Revenue*	(Could exceed \$100,000)	(Could exceed \$100,000)	(Could exceed \$100,000)
Merchandising Practices Fund	(\$101,739)	(\$94,807)	(\$97,236)
Crime Victims' Compensation Fund	(\$189,251)	(\$176,253)	(\$192,628)
Total Estimated Net Effect on <u>All</u> State Funds	(Could exceed \$390,990)	(Could exceed \$371,060)	(Could exceed \$389,864)

* Unknown costs for incarceration of offenders by DOC.

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
None			
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2001	FY 2002	FY 2003
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses
This fiscal note contains 11 pages.

FISCAL ANALYSIS

ASSUMPTION

In response to a similar proposal, officials of the **Office of the State Courts Administrator (CTS)** assumed this proposal would make changes in various computer-related laws and create several new related crimes. The legislation would also change the law relating to child pornography and create a new series of offenses. There may be some increase in the number of cases filed. CTS would not expect any significant impact on the budget of the judiciary.

In response to a similar proposal, officials from the **Office of the State Public Defender** assumed that existing staff could provide representation for those 15 - 25 cases arising where the indigent persons were charged with increased penalties for computer crimes, as well as for those 5 - 10 cases arising where indigent persons were charged with the crime of indecent solicitation of a child. However, passage of more than one similar bill would require the State Public Defender System to request increased appropriations to cover the cumulative cost of representing the indigent accused in the additional cases.

In response to a similar proposal, officials from the **Coordinating Board for Higher Education** and the **Office of Prosecution Services** assumed there would be no fiscal impact to their agencies as a result of this proposal.

Officials from the **Office of the Attorney General (AGO)** assumed the AGO has already seen a significant increase in consumer fraud cases over the Internet. This proposal provides Missouri with jurisdiction over cases where a Missouri citizen is a victim of a consumer scam or other crime. The AGO anticipates a need for a high tech crimes unit to investigate and prosecute cases where the Internet is used in criminal activity. AGO anticipates this unit would include the following: one (1) Assistant Attorney General IV, two (2) Assistant Attorneys General II, and two (2) Investigators. In addition there would be additional equipment and computer needs in out years as changes in technology occur. AGO assumes these costs would be paid from the Merchandising Practices Fund.

AGO further assumes the resources required do not differ from those estimated in the previous proposal because the source of Internet complaints is multi-jurisdictional. Also, the complaint may result in a civil or criminal case but the determination is not made until a substantial amount of work has been completed. The jurisdiction of the AGO is not impacted to that extent because it does not address civil jurisdiction.

ASSUMPTION (continued)

Oversight assumes this proposal would limit AGO's jurisdiction, for the crimes outlined in this proposal, to counties of the third classification which do not employ a full-time prosecuting attorney. Through discussions with officials from the **Office of Prosecution Services**, Oversight has determined that there are eighty-six counties of the third classification which do not employ a full-time prosecuting attorney. Since the largest portion of the population resides in counties of the first classification, Oversight assumes that a significant portion of cases would come from counties of the first classification. Eliminating AGO's jurisdiction for section 407.020 RSMo, crimes would in turn, reduce the number of cases to be handled by them. Therefore, Oversight assumes AGO would require (1) Assistant Attorney General II, and (1) Investigator to investigate and prosecute cases.

In response to a similar proposal, officials from the **Office of the Cole County Prosecuting Attorney** assumed generally that the enactment of a criminal statute which criminalizes conduct heretofore otherwise legal has only a small impact on county prosecutors' overall workload. Nevertheless, the creation of new criminal statutes requires that existing prosecutor case management and case reporting systems be upgraded. The total cost of these upgrades is approximately \$250,000 per year. Some percentage of that cost is due to the enactment of new criminal statutes. The conduct outlined in the proposal is, for the most part, already prohibited by other criminal statutes. Thus the proposal would not result in increased workloads. Even though the conduct is already criminal, the fact that new statutes are being created would have the fiscal impact described above.

In response to a similar proposal, official from the **Office of the Boone County Prosecuting Attorney** assumed the proposed legislation will have an unknown fiscal impact on their agency.

Oversight assumes the local government costs, allocable to this proposal would be minimal; therefore, no fiscal impact will be included in this fiscal note for local prosecuting attorneys.

The estimated fiscal impact is unknown to the **Department of Corrections (DOC)**, but due to the wide variance of crimes and punishments including newly created crimes and punishments, it is estimated to be significant, or in excess of \$100,000 per year. To further expound on the per diem rate noted, the average fiscal impact to house an offender for one year is \$12,998. Incarceration costs for an additional eight (8) offenders ($\$12,998 \times 8 = \$103,984$) per year would exceed \$100,000.

In response to a similar proposal, officials from **Southeast Missouri State University (SEMO)** assumed the proposal would affect approximately 200 computers in the library. All other computers on campus are not for public use. SEMO estimates costs of \$100 annually per machine for software, annual upgrades, labor and maintenance to comply with the legislation.

ASSUMPTION (continued)

In response to similar legislation, officials from the **Missouri River Regional Library** assume they would need one FTE Network Assistant (\$46,000) and one FTE Library Assistant (\$21,804). They would need equipment costing approximately \$30,000 annually. They also estimate needing web site registrations, database licensing and filtering software costing approximately \$125,000 annually.

In response to similar legislation, officials from the **Daniel Boone Regional Library** assume the proposal would result in personnel costs of approximately \$150,000 annually; capital improvements of approximately \$72,000 in FY 2001; and computer software and supplies of \$43,000 in FY 2001 and approximately \$9,000 annually in subsequent fiscal years.

Officials from the **Department of Elementary and Secondary Education (DES)** assume the proposal revises laws relating to computer crimes. It would require public schools, state colleges, universities, vocational schools, technical schools, and libraries with computers accessing the Internet to ensure the computers contain software designed to prevent minors from gaining access to material which is pornographic for minors.

DES estimates that there are 140,286 computers around Missouri school districts with Internet connectivity. 42% of districts report using filtering software on 85% of their computers. The distribution of these computers across districts is not known. Filtering software ranges in cost from \$0 to \$25. Additionally, software prices and capabilities vary according to the target age level. Given this information, DES believes the cost would be significant, i.e. in excess of \$100,000; however, DES cannot construct a specific estimate.

Oversight assumes the proposal requires any school district as defined in section 160.011 RSMo, any university or state college organized pursuant to chapters 172 through 174, RSMo, or any technical or vocational school organized pursuant to chapter 178, RSMo that provides computers accessible to its students or the public, on or before July 1, 2002, to develop policy designed to prevent minors from accessing pornographic material. The proposal does not require the use of filtering software; therefore, the costs associated with this portion of the proposal would be \$0 or minimal. Oversight has shown zero costs to local governments as a result of this proposal.

Officials from the **Office of Secretary of State (SOS)** assume most libraries currently have written computer use policies, but not all contain language specific to preventing minors from gaining access to material which is pornographic for minors. This legislation allows local libraries to determine the specific language of the policy and its implementation. SOS currently advises libraries on the development of computer use policies, and would continue to do so.

ASSUMPTION (continued)

Tobacco Products

Officials of the **Department of Public Safety, Office of State Courts Administrator, Department of Corrections, Office of the State Public Defender, Office of Prosecution Services and the Attorney General's Office** stated that this proposal would have little or minimal fiscal impact to their agency.

Officials of the **Department of Revenue (DOR)** state this legislation prohibits grey market cigarettes. Normally these are cigarettes that are made for overseas markets, they are loaded on a ship *sometimes* for shipment and somehow find their way back to the US. This legislation will have no administrative impact on Department of Revenue. There could possibly be a very small increase in taxable cigarette sales if this somewhat non-taxable market is eliminated, but it would be too small to estimate.

Based on the Department of Revenue's response, **Oversight** for purposes of this fiscal note, will reflect the fiscal impact of the proposal as zero.

Posting criminal offenders on the Internet

Officials from the **Department of Public Safety - Missouri Highway Patrol (MHP)** assume, based on information from MHP's Criminal Records and Identification Division, approximately 6,500 registered offenders will need to be posted. Each registrant will require about 20 minutes for posting onto the system. Each associated fingerprint card will need to be prepared, entered, and scanned/refiled. Two AFIS Entry Operators would be required to formally enter the 6,500 sex offender registrants onto the Internet as well as process and enter incoming sex offenders on the Internet daily. This task would require six months or more to complete without interruption. These positions would require the standard office equipment.

MHP's Information Systems Division would require two full-time CITS I (Computer Information Technology Specialist) positions to design, develop, acquire training, maintain the application and hardware, ensure security and monitor the network infrastructure for the web-site. These two positions would require the standard office equipment. The CITS I's would be required to design, develop, acquire training, maintain the application and hardware, ensure security and monitor the network infrastructure.

Additionally, consulting services would be needed to mentor, facilitate, and educate the required full-time CITS I's on the initial design and development of the application to post the registry to the web site. The system would be a Lotus Notes implementation with cost estimates utilizing state contract prices.

ASSUMPTION (continued)

MHP's Information System Division would also require hardware and software capable of hosting the new application and accommodating the anticipated increase in server access traffic.

Oversight assumes MHP currently maintains an Internet site and would not require the 2.0 FTE CITS I positions to design, develop, acquire training, maintain the application and hardware, ensure security and monitor the network infrastructure for the web-site; nor would MHP require consulting services, hardware and software for the initial design and development of the application. Oversight assumes MHP will not post information regarding fingerprints on the Internet as it is not required by the proposed legislation. In addition, Oversight assumes much of the information required to be posted on the Internet is currently available on existing systems and would not require significant resources to convert to a format compatible with the web-site. Oversight assumes any additional costs could be absorbed with existing resources.

Office of Victims of Crime

Officials from the **Department of Public Safety - Director's Office (DPS)** assume the new surcharge would take effect the date the proposal is signed into law. Therefore, the Office of Victims of Crime would be funded through these fees. It is assumed the travel expense will be used for education and promotional purposes of victims' services and to reimburse victims. DPS can only give an estimate of this cost. It can also be assumed that a conference will be held annually for the Office of Victims of Crime. This conference will educate and inform victims, law enforcement officials, advocates and all involved with victim services. It will also show how to prevent becoming a victim. Computer costs will be unknown as DPS is not sure what type of equipment, support personnel, etc. will be needed. To achieve the results indicated in subsection 3 of the proposal, it is assumed that a consultant will be needed to coordinate and assist in the development, implementation, and maintenance of the automated crime victim notification system. A consultant could range from \$40,000-\$100,000. This person would be needed to help guide the design and setup of the Office of Victims of Crime. It is assumed that printing and postage will be largely made up of pamphlets, booklets, promotional material, etc., that are sent out to inform victims, law enforcement personnel, and the citizens of Missouri to inform them of the Office of Victims of Crime. Furthermore, DPS assumes a vehicle will be needed for travel around the state to promote, educate, and help victims of crimes.

Oversight assumes DPS would incur costs for the salaries and fringe benefits of the requested FTE, office equipment and supplies, printing expenses, communication expenses, travel expenses as outlined in the proposal as well as for seminars, conference expenses, and consultant fees for first year.

ASSUMPTION (continued)

Officials from the **Office of State Court Administrator (CTS)** assume the Office of Victims of Crime would be funded by an increase in the Crime Victims' Compensation surcharge from \$5 to \$10. Based on the number of judgements assessed in FY 99, CTS estimates this increase could bring in as much as \$262,000 in additional revenue.

Officials from the **Office of Secretary of State (SOS)** assume there would be costs due to additional publishing duties related to the Department of Public Safety's authority to promulgate rules, regulations, and forms. SOS estimates the division could require approximately 32 new pages of regulations in the Code of State Regulations at a cost of \$26.50 per page, and 48 new pages in the Missouri Register at a cost of \$22.50 per page. Costs due to this proposal would be \$1,928, the actual fiscal impact would be dependent upon the actual rulemaking authority and may be more or less. Financial impact in subsequent fiscal years would depend entirely on the number, length, and frequency of the rules filed, amended, rescinded, or withdrawn. SOS does not anticipate the need for additional staff as a result of this proposal; however, the enactment of more than one similar proposal may, in the aggregate, necessitate additional staff.

Oversight assumes SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

<u>FISCAL IMPACT - State Government</u>	FY 2001 (10 Mo.)	FY 2002	FY 2003
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GENERAL REVENUE FUND

<u>Cost - Department of Corrections (DOC)</u>	(Could exceed \$100,000)	(Could exceed \$100,000)	(Could exceed \$100,000)
Per diem costs			

MERCHANDISING PRACTICES FUND

<u>Cost - Office of Attorney General</u>			
Salaries	(\$51,458)	(\$63,294)	(\$64,876)
Fringe benefits	(15,823)	(19,463)	(19,949)
Equipment and Expense	(34,458)	(12,050)	(12,411)
Total	<u>(\$101,739)</u>	<u>(\$94,807)</u>	<u>(\$97,236)</u>

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<u>FISCAL IMPACT - State Government</u>	FY 2001	FY 2002	FY 2003
(continued)	(10 Mo.)		

CRIME VICTIMS' COMPENSATION FUND

Office of Victims of Crime

<u>Cost - Department of Public Safety</u>			
Salaries	(\$182,580)	(\$230,051)	(\$242,363)
Fringe Benefits	(60,251)	(75,917)	(\$79,980)
Expense and Equipment	(208,420)	(132,285)	(132,285)
Total	(\$451,251)	(\$438,253)	(\$454,628)
 <u>Income - Increase in CVC surcharge</u>	 \$262,000	 \$262,000	 \$262,000

ESTIMATED NET EFFECT ON CRIME VICTIMS' COMPENSATION FUND	<u>(\$189,251)</u>	<u>(\$176,253)</u>	<u>(\$192,628)</u>
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<u>FISCAL IMPACT - Local Government</u>	FY 2001	FY 2002	FY 2003
	(10 Mo.)		
	0	0	0

FISCAL IMPACT - Small Business

No direct fiscal impact on small businesses would be expected due to this proposal.

DESCRIPTION

This proposal makes changes to provisions concerning computer crimes and tobacco products.
 The proposal:

(1) Amends the current statute providing civil remedies for victims of computer crime by adding owners or lessees of computers or computer equipment to those who may utilize the statute. Currently, only owners or lessees of computer systems, networks, programs, or services may use the statute. The proposal also amends the current statute to allow for the recovery of expenses incurred to block future access by the perpetrators of computer invasion of privacy or unlawful computer communications (537.525);

DESCRIPTION(continued)

- (2) Establishes the jurisdiction and venue for crimes committed through use of a computer as any county in which any act was performed in furtherance of the crime, or any county in which the accused had control of materials or objects used in furtherance of the crime, or any county in which computers or computer equipment used in furtherance of the crime are located, or any county from which, in which, or through which access to a computer or computer network was made (541.033);
- (3) Amends current law to allow law enforcement to obtain warrants to search for and seize child pornography for other than evidentiary purposes without first holding an adversarial hearing to determine whether the matter is obscene (542.281);
- (4) Updates methods of communications for crime of harassment. The penalty remains a class A misdemeanor (565.090);
- (5) Clarifies that the offense of aggravated stalking includes credible threats made by electronic communications, in person, or by posted messages publicly accessible via a computer (565.225);
- (6) Creates the class C felony crime of invasion of privacy in the first degree when nude photographs or images made without the subject's consent are distributed or made accessible by computer. The proposal amends the current invasion of privacy statute, which does not require the distribution or transmission of images, to make it a crime in the second degree (565.253);
- (7) Extends the duty to computer providers, installers or repair persons, and Internet service providers to report to law enforcement if they know of or see images depicting child pornography. Currently, this duty is only imposed on film and print processors. The proposal also raises the age of children that the statute applies to from 17 to 18 (568.110);
- (8) Expands the crime of causing catastrophe to include the sending of a computer virus and altering a computer program that controls a public service (569.070);
- (9) Amends the definitions section of the child pornography laws to include the creation and sending of child pornography via computers (573.010). The proposal also amends the crime of promoting child pornography in the first and second degree to include the creation of child pornography with the intent to electronically transfer it (573.025, 573.035);
- (10) Amends the crime of possession of child pornography (573.037);
- (11) Creates the unlawful practice of computer invasion of privacy, tampering with computer equipment, tampering with computer users, and allows the attorney general to have concurrent jurisdiction in prosecutions for computer crimes listed in this section, in counties of third classification without a full-time prosecutor (407.020);

DESCRIPTION(continued)

(12) Requires that school districts, technical and vocational schools, universities or state colleges, and libraries that provide computers accessible to students or the public, on or before July 1, 2002, to develop policy designed to prevent minors from accessing pornographic material;

(13) Allows any city, town, or county to enact and enforce an ordinance prohibiting public nudity, or any live electronic transmission via Internet of any live public nudity (573.017);

(14) Creates the crime of sexual exploitation of a minor (573.023).

This legislation is not federally mandated, would not duplicate any other program, and could require additional capital improvements or rental space.

Tobacco Products

This act prohibits a tax stamp from being affixed to any package of cigarettes unless certain federal requirements are met. No stamp shall be affixed to any package that is labeled as not intended for sale inside the United States or has a label that has been altered. A violation is a Class D felony, and is also deemed a deceptive act or practice. The Department of Revenue may revoke a wholesale license of a person in violation of these provisions, and may seize the items involved. The proposal also makes it a class A misdemeanor to knowingly sell cigarettes to persons aged eighteen or less through use of the Internet.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

Posting criminal offenders on the Internet

The proposed legislation requires the Department of Public Safety to put information on the department's Internet web site, regarding persons who have pled guilty to or been convicted of a third or subsequent sexual offense requiring registration, and who have demonstrated predatory behavior. The site will include the person's name, photograph, birth date, address, place of employment, and status as a persistent or predatory sex offender. The site will also include a description of the crime committed which requires registration and any information that the department determines is necessary to preserve public safety.

This legislation is federally mandated by the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. It would not duplicate any other program, and would not require additional capital improvements or rental space.

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DESCRIPTION(continued)

Office of Victims of Crime

Creates the Office of Victims of Crime to be funded by an increase in the Crime Victims' Compensation Fund surcharge from \$5 to \$10.

This legislation is not federally mandated, would not duplicate any other program and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Corrections
Office of Prosecution Services
Office of State Public Defender
Department of Public Safety
Office of the Attorney General
Office of State Courts Administrator
Department of Revenue
Department of Elementary and Secondary Education
Cole County Prosecuting Attorney
Boone County Prosecuting Attorney
Southeast Missouri State University
Office of Secretary of State
Missouri River Regional Library
Daniel Boone Regional Library
Coordinating Board for Higher Education



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